IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-931

R. J. Kunkle, d/b/a R. J. Restoration Co., Petitioner

v.

Arthur Eggleston, Respondent

Petition for a Writ of Certiorari to the Ohio Supreme Court

Counsel for Petitioner
E. Bruce Hadden
JONES, CAMPBELL
& HADDEN
500 West Wilson
Bridge Road
Worthington, OH 43085

INDEX

CITATIONS

IN THE SUPREME COURT OF THE UNITED STATES

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R. J. Kunkle, d/b/a R. J. Restoration Co., Petitioner

v.

Arthur Eggleston, Respondent

Petition for a Writ of Certiorari to the Ohio Supreme Court

The Petitioner R. J. Kunkle prays that a Writ of Certiorari issue to review the Journal Entry of the Ohio Supreme Court refusing to hear the Petitioner's appeal from the Judgment entered by the Court of Appeals, Tenth Appellate District of Ohio. Said Journal Entry was entered on September 29, 1977.

OPINIONS BELOW

The judgment of Circuit Court of

Daviess County, Indiana is attached in the Appendix at page 19. The opinions of the Common Pleas Court of Franklin County, State of Ohio, are unreported and are attached in the Appendix as follows: Journal Entry and Decision (Appendix, page 24); Findings of Fact and Conclusions of Law (Appendix, page 26). The opinions of the Tenth District Court of Appeals, Franklin County, State of Ohio, are unreported and are attached in the Appendix as follows: on original argument (Appendix, page 31); on Motion for Reconsideration (Appendix, page 39). There were no opinions rendered by the Ohio Supreme Court. Its Journal Entry denying the Petitioner's Motion to Certify entered on September 29, 1977 is attached to this Petition in the Appendix at page 46.

JURISDICTION

The judgment of the Ohio Supreme Court denying the Petitioner's Motion to Certify the record was entered on September 29, 1977. The jurisdiction of this Court is invoked under 28 U.S.C., §1257(3).

QUESTIONS PRESENTED

Respondent procured an in personam judgment against Petitioner in an Indiana State Court. The Indiana State Court judgment disclosed on its face that Petitioner was not offered an opportunity to appear and defend, (i.e., the judgment was rendered automatically without service of process on Petitioner) and there was no determination by the Indiana State Court that procedural due process prerequisites to afford jurisdiction over an Ohio resident not served with process in

Indiana had been satisfied.

The Ohio Courts, while granting full faith and credit to the Indiana judgment which was neither offered nor admitted into evidence, also refused to subject the Indiana judgment to any procedural or substantive due process standards.

The Questions Presented are:

1. Whether an Indiana Court may enter an in personam judgment against an Ohio resident neither served with process nor offered an opportunity to appear and defend prior to judgment.

2. Whether an Ohio Court may give full faith and credit to an in personam Indiana State Court judgment that is neither offered nor admitted into evidence and which judgment

discloses on its face that Petitioner was denied the opportunity to appear and defend.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States, Amendment V.

> "No person shall be *** deprived of life, liberty, or property, without due process of law; ***."

Constitution of the United States, Amendment XIV, Section 1.

> "***nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

1. On October 29, 1974 a Complaint

was filed in the Franklin County Common Pleas Court alleging Respondent recovered a judgment in the Circuit Court of Daviess County, Indiana. Attached to that Complaint was a copy of the alleged judgment of the Circuit Court of Daviess County and a copy of the alleged award of the Industrial Board of Indiana.

2. On or about December 2, 1974 Petitioner filed his answer admitting that he is a resident of Franklin County, Ohio, denying the remaining factual assertions of the Complaint and asserting procedural and substantive due process defenses.

3. On February 17, 1976 the case was submitted to the Court on

the pleadings, trial briefs and no evidence other than the Stipulation of counsel that the Respondent was hired by the Petitioner in Ohio and then went to Indiana.

4. The Ohio Trial Court entered a judgment in favor of Respondent.

5. The Court of Appeals affirmed Trial Court's judgment.

6. The Supreme Court of Ohio refused to certify record.

REASONS FOR GRANTING THE WRIT

1. An Indiana Court may not enter an in personam judgment against an Ohio resident without ascertaining that the minimum contacts prerequisites enunciated in International

Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), have been satisfied.

The Indiana State Court judgment (Appendix, page 19) discloses on its face that Petitioner was neither served with process nor offered an opportunity to appear and defend before judgment was rendered against him.

> "Comes now Arthur Eggleston, by counsel, and having filed herein his Petition for Judgment upon a decision and order of The Industrial Board of Indiana, which said petition is in the words and figures, as follows:
>
> (H.I.)
>
> And the Court, having read and examined said petition and the matters and facts filed therewith and set forth therein and being duly advised in the premises, NOW FINDS that a certified copy of said decision and order of The Industrial Board of Indiana was duly issued by said board and filed herein; that said petition should be granted; and that judgment should be entered and rendered by this Court in accordance with said decision and order of said industrial board and that notice of said judgment should be given to the parties, ***."

In International Shoe, supra, this Court established the jurisdictional prerequisites to an in personam judgment against a nonresident defendant.

> "***due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' ***" (Citations omitted) 326 U.S. 316, 90 L.Ed. 102.

The mandates of International Shoe, supra, have been applied to both natural

persons and corporations. McGee v. International Life Insurance Company, 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957).

In Shaffer v. Heitner, 53 L.Ed.2d 682, 95 S.Ct. 2569 (1977), this Court extended the minimum contacts standards of International Shoe, supra, to in rem actions. This Court determined:

> "***the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of Pennoyer rest, became the central concern of the inquiry into personal jurisdiction. ***" 53 L.Ed.2d 698.

In the case now before this Court, the Indiana Court had no jurisdiction to render an in personam judgment against the Petitioner. Absent evidence that the judgment obtained in Indiana was rendered pursuant to the Indiana Court's

obtaining personal jurisdiction over the Petitioner, its judgment against the Petitioner is void, fails to satisfy minimum procedural and substantive due process requirements and is not entitled to full faith and credit by the Ohio Courts. Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958).

2. Petitioner was deprived of his property in violation of the due process clause of the Fourteenth Amendment by the Ohio Courts' granting full faith and credit to the in personam Indiana State Court judgment.

A judgment obtained without procedural due process in one state is not entitled to the full faith and credit in a sister state. Griffin v. Griffin,

327 U.S. 220, 66 S.Ct. 556, 90 L.Ed. 635 (1945), rehearing denied 327 U.S. 220, 90 L.Ed. 1645 (1946). The due process clause of the Fourteenth Amendment requires that at a minimum any deprivation of life, liberty or property must be preceded by notice and an opportunity for hearing Griffin v. Griffin, supra, and Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971). Entering a judgment that imposes penalties on persons or deprives them of life, liberty or property without adequate notice and an opportunity to defend is also a denial of due process. Shelley v. Kraemer, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1947).

There was no evidence that the Indiana Court served the Petitioner with process in Indiana, served the Petitioner with process in Ohio or afforded

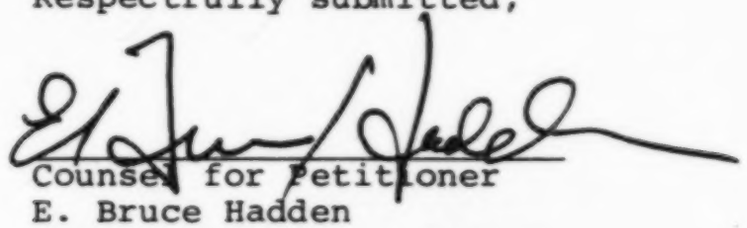
Petitioner the opportunity to appear and defend prior to rendering judgment against Petitioner. The Petitioner is entitled to notice and an opportunity to a hearing on the merits prior to the entering of a personal judgment against him. Without having been given this opportunity, the Petitioner is now subject to a substantial personal judgment, and it is appropriate for this Court to resolve the Petitioner's rights not to have his property interests taken from him without due process of law.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the

judgment of the Ohio Supreme Court.

Respectfully submitted,



Counsel for Petitioner
E. Bruce Hadden
JONES, CAMPBELL & HADDEN
500 W. Wilson Bridge Rd.
Worthington, Ohio 43085

CONSTITUTION OF THE UNITED STATES

AMENDMENT V--CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV.--CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which

the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such States.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in the aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

28 U.S.C., CHAPTER 81.--STATE COURTS

§1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

STATE OF INDIANA)
)SS:
COUNTY OF DAVIESS)

IN THE CIRCUIT COURT OF DAVIESS COUNTY

Cause No. C76-185

ARTHUR EGGLESTON,

Plaintiff,

-vs-

R. J. KUNKLE d/b/a R. J. RESTORATION COMPANY,

Defendant.

FILED
IN OPEN COURT
JUN 28 1974

WILBUR R. PERSHING
Clerk, Daviess
Circuit Court

JUDGMENT

Comes now Arthur Eggleston, by counsel, and having filed herein his Petition for Judgment upon a decision and order of The Industrial Board of Indiana, which said petition is in the words and figures, as follows:

(H.I.)

And the Court, having read and examined said petition and the matters and facts filed therewith and set forth therein and being duly advised in the

premises, NOW FINDS that a certified copy of said decision and order of The Industrial Board of Indiana was duly issued by said board and filed herein; that said petition should be granted; and that judgment should be entered and rendered by this Court in accordance with said decision and order of said industrial board and that notice of said judgment should be given to the parties,

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, as follows:

1. That the plaintiff herein, Arthur Eggleston, shall recover of and from the defendant herein, R. J. Kunkle, d/b/a R. J. Restoration Company, the sum of $14,344.18 (including both principal and interest), and the costs of this action assessed in the sum of $26.00 plus 50¢ certification - total $26.50, together with interest on said costs

computed at the rate of 8% per annum and with interest so computed and accruing on the sum of $12,426.00 from the date hereof;

2. That said plaintiff shall recover of and from said defendant the further sum of $5,073.00, the same to be payable by defendant to plaintiff in equal weekly installments of $57.00 each for 89 weeks beginning July 1, 1974, together with interest computed at the rate of 8% per annum upon all such installments remaining unpaid from time to time; and

3. That the sums to be recovered by plaintiff hereunder shall be paid direct to plaintiff except for attorney fees in the sum of $2,117.40 which shall be paid by defendant direct to plaintiff's attorney, James E. Sandifer, together with interest computed at the

rate of 8% per annum and accruing on said sum of $2,117.40 from and after December 23, 1973, and defendant shall credit against the sums due plaintiff from defendant under this judgment for all sums paid out as attorney fees to said James E. Sandifer.

4. The Clerk of this Court shall give notice of this judgment to the defendant by depositing a copy thereof in the U. S. post office addressed to him, with postage prepaid, as follows:

R. J. Kunkle d/b/a
R. J. Restoration Company
Box 463
Worthington, Ohio 43085

and comes now such Clerk and certifies that such notice is so given to defendant contemporaneously herewith.

Dated 6/28/74

/s/ James R. Arthur
Judge, Circuit Court
of Daviess County,
Indiana

STATE OF INDIANA
COUNTY OF DAVIESS SS:

CERTIFICATE

I, WILBUR R. PERSHING, CLERK OF DAVIESS CIRCUIT COURT, DAVIESS COUNTY, INDIANA, DO HEREBY CERTIFY THAT THE FOREGOING IS TRUE AND COMPLETE COPY OF Judgment -- Book J-9 Page 17 HAD IN SAID CAUSE AND ENTERED ON THE RECORDEDS THEREOF.
IN WITNESS WHEREOF, I HEREUNTO SUBSCRIBE MY NAME AND AFFIX THE SEAL OF SAID COURT THIS 28 DAY OF JUNE 1974

/s/ Wilbur R. Pershing
CLERK DAVIESS CIRCUIT COURT

COURT OF COMMON PLEAS,
FRANKLIN COUNTY, OHIO

Arthur Eggleston :

Plaintiff :

vs. : Case No. 76CV-10-4013

R. J. Kunkle, dba
R. J. Restoration Co.:

Defendant :

DECISION AND JUDGMENT ENTRY

Rendered this 11 day of January, 1977.

RADER, J.

This cause having been come on for trial before the Court and the Court under even date herewith having rendered its Findings of Fact and Conclusions of Law, verdict and judgment are hereby rendered in favor of plaintiff and against defendant in the sum of $14,344.18, together with (Daviess County, Indiana) costs in the amount of $26.50 with interest on said sum at the

rate of 8% per annum from June 28, 1974; plaintiff is further awarded the judgment against defendant in the sum of $5,073.00 to be payable by defendant to plaintiff in equal weekly installments of $57.00 for 80 weeks together with interest computed at the rate of 8% per annum upon all such installments remaining unpaid from time to time, and defendant is ordered to pay the costs of this action.

/s/ Rader
Clifford E. Rader,
Judge

COPY TO:

R. Jeffrey Schmidt, Attorney for Plaintiff
E. Bruce Hadden, Attorney for Defendant

COURT OF COMMON PLEAS,
FRANKLIN COUNTY, OHIO

Arthur Eggleston :

Plaintiff :

vs. : Case No. 74CV-10-4013

R. J. Kunkle, dba :
R. J. Restoration Co.:

Defendant :

Rendered this 11 day of January, 1977.

RADER, J.

FINDINGS OF FACT

1. In September 1969, plaintiff Eggleston was hired by defendant R. J. Kunkle, an individual d.b.a. R. J. Restoration Co., to work as a sand blaster in restoring churches located in Indiana. There was no written agreement, but Eggleston was to travel from his home in Marion, Ohio to the work sites in Indiana on Monday mornings, and he resided there until Friday when he

would return home for the weekend.

2. For the next two months Eggleston worked on at least four buildings, each comprising an entirely separate job and all being in Indiana, where he received a serious eye injury on October 22, 1969.

3. Defendant had no insurance and the Company soon went out of business.

4. Plaintiff filed a claim with the Industrial Board of Indiana, his claim was processed, defendant was notified and made serveral (sic) personal appearances before the Board, and the Industrial Board ruled that it did have jurisdiction and that a compensable injury had occurred. It made an award to plaintiff for his loss of vision and loss of wages.

5. Eggleston filed a certified copy of the Industrial Board's award in

Circuit Court of Daviess county, where the accident occurred, and such Court awarded judgment for him.

6. Eggleston has now filed a certified copy of the Circuit Court's judgment in the Common Pleas Court of Franklin County, wherein defendant resides.

CONCLUSIONS OF LAW

1. This is an Indiana contract.

2. Defendant is an Indiana employer.

3. Plaintiff is an Indiana employee.

4. The Indiana Industrial Board and Circuit Court did have jurisdiction.

5. Plaintiff is entitled to enforce the judgment of the Circuit Court of Davies (sic) County, Indiana in the Court of Common Pleas of Franklin County.

6. Section 40 - 1701 (a) in 1969 defined "employer" as follows:

> "'Employer' shall include**any individual using the services of another for pay.**"

7. The residence of the employer outside the state of Indiana does not prevent such employer from being an Indiana employer.

8. By 1963 amendment, Indiana changes its law to include a presumption that all employers have agreed to be bound by the provisions of the Workmen's Compensation Act unless special notice was filed with the Indiana Industrial Board.

9. Since no exemption was ever filed by defendant, it must be presumed that he accepted the provisions of the Indiana Workmen's Compensation Act when he entered into Indiana to do business there.

10. The Court finds that the plaintiff was an Indiana employee, although it is not necessary, in the Court's opinion, to do so.

11. An employment entered into in Ohio in contemplation of performance solely in Indiana leads the Court to the conclusion that this is an Indiana contract of employment.

12. There is a presumption of validity attaching to the Indiana Circuit Court judgment.

13. There were sufficient facts for the Industrial Board of Indiana to take jurisdiction in this case and to make its award.

/s/ Clifford E. Rader
Clifford E. Rader
Judge

COPY TO:

R. Jeffrey Schmidt
Attorney for Plaintiff
E. Bruce Hadden
Attorney for Defendant

IN THE COURT OF APPEALS OF
FRANKLIN COUNTY, OHIO

Arthur Eggleston, :

Plaintiff-Appellee, :

v. : No. 77AP-102

R. J. Kunkle, dba R. J. Restoration Company, :

Defendant-Appellant. :

D E C I S I O N

Rendered on June 9, 1977

CRABBE, BROWN, JONES,
POTTS & SCHMIDT,
MR. R. JEFFREY SCHMIDT,
42 East Gay Street
Columbus, Ohio 43215,
and
MR. THOMAS TRIPP,
165 North High Street
Columbus, Ohio 43215,
For Plaintiff-Appellee.

CAMPBELL & HADDEN,
MR. E. BRUCE HADDEN, and
MR. J. DAVID HARRIS, of Counsel,
500 West Wilson Bridge Road
Worthington, Ohio 43085,
For Defendant-Appellant.

STRAUSBAUGH, P. J.

This is an appeal by defendant from a judgment in the Common Pleas Court of plaintiff.

The record reveals that the action was commenced in the Common Pleas Court based upon a judgment rendered in favor of plaintiff and against defendant in the Circuit Court of Daviess County, Indiana, a certified copy of the judgment being attached to the plaintiff's complaint; that defendant thereafter filed an answer to plaintiff's complaint. The following is defendant's pre-trial statement of the questions of law and legal issues:

> "1. Did the Indiana Bureau of Workmen's Compensation have jurisdiction over an Ohio claimant and an Ohio employer when the Indiana Workmen's Compensation Act provides for 'contract' rather than 'situs' coverage and when the Ohio em-

> ployer and the Ohio employee were covered under the Ohio Workmen's Compensation Act?
>
> "2. The basis of the Indiana Bureau of Workmen's Compensaton jurisdiction over the Ohio employer.
>
> "3. The basis of the Indiana District Court's jurisdiction over the Ohio employer.
>
> "4. The lack of jurisdiction of the Indiana Court to render judgment against an Ohio Defendant.
>
> "5. Plaintiff failed to file a claim with the Bureau of Workmen's Compensation within the time limited for filing the same."

The case came on for trial on February 17, 1976. The following being the entire transcript of proceedings:

> "THE COURT: In the presence of counsel, let the Court fill in a little background. This case is Judge Tyack's case. He apparently is in trial. The case was transferred down to Judge Rader today, on the 17th of February, 1976, and counsel

appearing determined that further evidence was unnecessary; that solely legal questions are involved, and the Defendant, through Mr. Hadden, has today filed a brief. Plaintiffs are granted until March 2nd, 1976, to file their brief. Both of them are trial briefs rather than the one being responsive to the other in any particular order, and that the Court following that will determine the case.

"MR. HADDEN: The only other thing we did have, and I think Plaintiff's counsel has agreed, that the Plaintiff was hired by the Defendant in Ohio, and then went over to Indiana, which gave rise to all of the subsequent proceedings, and we would like the opportunity to file a reply brief, if it is deemed necessary, depending upon which issues are raised by the Plaintiffs.

"(Thereupon, the Court and counsel discussed the dates on which briefs were to be filed.)"

Defendant in his supplemental trial brief states:

"The sole question before this Court is the presence or absence of jurisdiction by the Circuit Court of Daviess County, Indiana

over this defendant when it rendered its alleged judgment which was based upon the certification of an alleged award of Workmen's Compensation benefits by the Industrial Board of Indiana which was certified to that Court and transformed into a judgment of that Court * * *"

Defendant is contending that the plaintiff is not entitled to the full faith and credit of the Indiana judgment because of lack of jurisdiction of the Indiana court. In both defendant's pre-trial statements and his trial brief, defendant contests jurisdiction but not the judgment rendered by the Indiana court. Although the record made by both parties in this case leaves a great deal to be desired, this court finds significance in the omissions in the record and the objections which were not made by the defense in this case. It is apparently conceded that plaintiff was hired by the defendant in Ohio, was injured in

Indiana, and that a judgment was obtained by plaintiff in the Indiana court. The trial court had before it, and there is in the record, the certified copy of the Indiana Judgment.

The Supreme Court in Symons v. Eichelberger (1924), 110 Ohio St. 224, held:

> "1. The courts of the state of Ohio will give full faith and credit to the judicial decrees of courts of record of the District of Columbia. Such decrees are conclusive upon the merits of the controversy therein adjudicated.
>
> " * * *
>
> "3. In an action upon a judgment rendered in a court of record of the District of Columbia, jurisdiction is presumed. The burden of proof of establishing that the court in question had no jurisdiction to render the judgment sued upon rests upon the defendant."

Defendant brings seven assignments of error:

> "1. The Trial Court erred in rendering Findings of Fact numbered 1 through 5.
>
> "2. The Trial Court erred in rendering Conclusions of Law numbered 4 (in part), 5 and 12.
>
> "3. The Trial Court erred in taking judicial notice of the judgment purportedly rendered by the Circuit Court of Daviess, Indiana.
>
> "4. The Trial Court erred in granting full faith and credit to the purported judgment entered by the Circuit Court of Daviess County, Indiana.
>
> "5. The Trial Court erred in rendering Conclusions of Law numbered 1, 2, 3, 4 (in part), 6, 7, 8, 9, 10, 11, and 13.
>
> "6. The Trial Court erred in finding that the Plaintiff was an Indiana employee and that the Defendant was an Indiana employer.
>
> "7. The judgment of the Trial Court is against the manifest weight of the evidence and contrary to law."

We find that there was no prejudi-

cial error on the part of the trial court in rendering the judgment in favor of plaintiff and against defendant and in rendering its findings of fact and conclusions of law. We further find that the judgment of the trial court is not against the manifest weight of the evidence and contrary to law. For the foregoing reasons all of defendant's assignments of error must be and, therefore, are overruled, and the judgment is affirmed.

Judgment affirmed.

HOLMES and REILLY, JJ., concur.

IN THE COURT OF APPEALS OF
FRANKLIN COUNTY, OHIO

Arthur Eggleston,
Plaintiff-Appellee,

v. : No. 77AP-102

R. J. Kunkle, dba
R. J. Restoration
Company,

Defendant-Appellant.

D E C I S I O N

Rendered on August 4, 1977

CRABBE, BROWN, JONES,
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Columbus, Ohio 43215,
and

MR. THOMAS TRIPP,
165 North High Street,
Columbus, Ohio 43215,
For Plaintiff-Appellee.

CAMPBELL & HADDEN
MR. E. BRUCE HADDEN, and
MR. J. DAVID HARRIS, of Counsel,
500 West Wilson Bridge Road
Worthington, Ohio 43085,
For Defendant-Appellant.

STRAUSBAUGH, P. J.

Defendant-appellant moves this court to reconsider its decision of June 9, 1977, or in the alternative to certify this case as being in conflict with decisions issued by other appellate districts.

The gravamen of appellant's motion is that the trial judge considered while making his decision the judgment of the Circuit Court of Davies County, Indiana, which was not offered into evidence in the trial court. However, the plaintiff attached a copy of the Indiana decision to his complaint. Defendant from the moment this lawsuit began was aware that plaintiff was pinning his entire case on the Indiana judgment. In defendant's trial brief, defendant says that, "The sole question before this Court is the person in the presence or absence of

jurisdiction by the Circuit Court of Davies County over this defendant * * *" Further on in his trial brief, defendant quotes from the decision of the Industrial Board of Indiana, whose decision was upheld by the Circuit Court of Davies County.

There is no doubt that defendant at all times after the commencement of this action in the Common Pleas Court was aware of the Indiana judgment. The defendant asserts that the trial court's use and reliance on the Indiana decision was unfair and contrary to law. This assertion is not timely. Defendant knew that the trial judge was considering the judgment of the Indiana Court. The record indicates that judgment is the only evidence the trial court had before it to consider, yet defendant failed to object. Defendant could have objected

to the use of the Indiana judgment by the trial court, but perhaps realized that as a practical matter all plaintiff would have to have done was move to have the judgment admitted into evidence. Regardless we will not now overturn the trial court's decision as defendant knew of and failed to object to the reliance of the trial court on the Indiana judgment.

Defendant asks this court to certify this case as being in conflict with State v. Snowden (1976), 49 Ohio App. 2d 7. Snowden, supra, applied Civ. R. 44(A)(1), which is the rule for authentication of judgments of other states. Civ. R. 44(A)(1) states that:

> "An official record, or an entry therein, kept within a state or within the United States or within a territory or other jurisdiction of the United States, when admissible for any purpose, may be evidenced by an official

> publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record in which the record is kept or may be made by any public officer having a seal of office and having official duties in the political subdivision in which the record is kept, authenticated by the seal of his office."

Defendant alleges the officer having legal custody of the original document did not certify that he had custody of the document. State v. Snowden, supra, held that if the offical record is not accompanied by a certificate that such officer has the custody, then the evidence is inadmissible. We have not reached this issue, because we have held that defendant knew the trial judge was using the Indiana judgment to make his decision and did not object,

thus waiving his right to complain. We reiterate, defendant should have voiced these objections during the proceedings. Thus, we find this case not in conflict with Snowden, supra.

This case is also not in conflict with Toledo Trust Co. v. National Bank of Detroit (1976), 50 Ohio App. 2d 147. In Toledo Trust Co., supra, the judgment of a Michigan Probate Court was not granted full faith and credit on the grounds Michigan had no jurisdiction over one of the parties. This court agrees with the proposition of law propounded in Toledo Trust Co., supra, that a judgment of a court of a sister state is not entitled to full faith and credit unless the court has jurisdiction of the subject matter and the person who is a party. However, in the instant case, defendant who is challenging the juris-

diction of the Indiana court, has the burden of establishing that the Indiana court did not have jurisdiction to render the judgment. Symons v. Eichelberger (1924), 110 Ohio St. 224. Defendant did not meet that burden. Therefore, this motion for certification of conflict is also overruled.

We find no merit in defendant's motion for reconsideration, nor any merit in defendant's motion for certification of conflict. Therefore, all motions are overruled.

Motions overruled.

HOLMES and REILLY, JJ., concur.

THE SUPREME COURT OF OHIO

THE STATE OF OHIO,) 1977 TERM
)
City of Columbus.) To wit: September 29, 1977

Arthur Eggleston,)
Appellee,)
)
vs.) APPEAL FROM THE
) COURT OR APPEALS
R. J. Kunkle, d.b.a.)
R. J. Restoration) for Franklin
Co.,) County
Appellant.)

This cause, here on appeal as of right from the Court of Appeals for Franklin County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Franklin

County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this

____ day of _____ 19__

_____Clerk

_____Deputy

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for a Writ of Certiorari was served on R. Jeffrey Schmidt, Esq., 42 East Gay Street, Columbus, Ohio 43215, and on Thomas Tripp, Esq., 165 North High Street, Columbus, Ohio 43215, Attorneys for Respondent, by U. S. Mail, postage prepaid, this 28TH day of December, 1977.

E. Bruce Hadden

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-931

R. J. Kunkle, d/b/a R. J. Restoration Co., Petitioner

v.

Arthur Eggleston, Respondent

Petition for a Writ of Certiorari to the Ohio Supreme Court

Brief for Respondent in Opposition

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-931

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v.

Arthur Eggleston, Respondent

Petition for a Writ of Certiorari to the Ohio Supreme Court

Brief for Respondent in Opposition

OPINIONS BELOW

The opinions delivered in the courts below are not as yet officially reported, but are appended to the Petition for a Writ of Certiorari. The judgment of the

Ohio Supreme Court denying Petitioner's Motion to Certify the record was entered on September 29, 1977.

JURISDICTION

Respondent does not question the jurisdiction as set forth in the petition.

QUESTIONS PRESENTED

The Petitioner in his Petition presents two (2) questions neither of which bear upon this case or have there basis in the record of this case. While Respondent feels that the opinions of the courts below are clear and correct and no real question is presented in this case, if there is a question presented it would be with regard to the Full Faith and Credit provision of the United States Constitution and whether a judgment of a sister

state is entitled to Full Faith and Credit when sought to be enforced in the courts of another state.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Article IV, Section 1.

> "Full Faith and Credit shall be given in each state to the public acts, records, and judicial proceedings of every other state."

STATEMENT OF THE CASE

Petitioner's Statement of the Case is substantially correct, with the exception that it was agreed between Petitioner and Respondent that the case would be submitted to the Trial Court, on the pleadings and trial briefs. Attached to the pleadings and thereby considered as evidence were certified

copies of the Judgment Decree rendered in the State of Indiana, as well as other official documentation.

ARGUMENT

While Respondent does not take issue with the legal theories expounded in Petitioner's Argument portion of his petition (i.e., those theories expounded in International Shoe Co. v. Washington, 326 U. S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945); McGee v. International Life Insurance Company, 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed. 2d 223 (1957); and Shaffer v. Heitner, 53 L.Ed. 2d 682, 95 S.Ct. 2569 (1977), etc.), Respondent states that Petitioner has missed the real issue which has been involved with this case from the very beginning. That issue, very simply, is the fact that Petitioner, from the out-

set of this case, has failed to affirmatively question the jurisdiction of the Indiana court to render the original judgment.

While it is without question that a judgment of one state is entitled to Full Faith and Credit in the courts of another state (United States Constitution, Article IV, Section 1), it is further without question that this requirement as to Full Faith and Credit does not require a state to enforce a judgment of another state if the judgment is rendered without jurisdiction, or otherwise wanting in due process of law. (Wedmore v. Karrick, 205 U.S. 141, 51 L.Ed 745, 27 S.Ct. 434 (1907))

Although the application of the Full Faith and Credit clause of the United States Constitution requires that a judgment of one state be upon proper juris-

dictional and other due process grounds, the question becomes whether it is necessary for the judgment creditor in the original suit who seeks to enforce his judgment in a sister state has the burden once again of pleading and proving proper jurisdiction. Petitioner indicates in his brief that it is incumbent upon the judgment creditor (i.e., the Respondent herein) to plead and prove jurisdiction at each point in the proceeding. Respondent respectfully submits that Petitioner is in error and that once a judgment is received in one state, and that judgment is sought to be enforced in another state, the burden of showing that there was no jurisdiction in the original action rests with the judgment debtor (i.e., the Petitioner in this case). The law is clear not only as enunciated by the Supreme Court of Ohio, but also by

the United States Supreme Court in several cases that the judgment of a court of record of general jurisdiction is presumed to be within its jurisdiction, that is, it will be presumed that a court of general jurisdiction regularly acquired and lawfully exercised its jurisdiction over the parties, not only in attempts collaterally to impeach such judgments generally, but also in an action upon it. See Symons v. Eichelberger, 110 O.S. 224 (1924), Barber v. Barber, 323 U.S. 77, 89 L. Ed. 82, 65 S.Ct. 137 (1944).

The court in Barber v. Barber, (supra), stated that:

> "The judgment of a court of general jurisdiction of a sister state duly authenticated his prima facie evidence of the jurisdiction of the court to render it and of the right which it purports to adjudicate."

The Symons (supra) also stands for

the proposition that the burden of proof establishing the court in question not to have had jurisdiction to render the judgment sued upon rests upon the defendant. The Supreme Court of Ohio in the Symons case held:

> "3. In an action upon judgment rendered in a court of record of the District of Columbia, jurisdiction is presumed. The burden of proof of establishing that the court in question had no jurisdiction to render the judgment sued upon rests upon the defendant."

This proposition regarding the burden of proof was also enunciated in the case of Williams v. North Carolina, 325 U.S. 226, 89 L.Ed 1577, 65 S.Ct. 1095 (1945), rehearing denied 325 U.S. 895, 89 L.Ed 2006, 65 S.Ct. 1650 (1945), and Esenwein v. Commonwealth, 325 U.S. 279, 89 L.Ed 1608, 65 S.Ct. 1118 (1945). The

Supreme Court of the United States in the case of Williams v. North Carolina (supra), stated as follows:

> "The burden of undermining the verity which the divorce decree of the sister state imports rests heavily upon the assailant."

Further, in the Esenwein case (supra), the court stated as follows:

> "The burden is on the litigant who would escape the operation of a judgment decreed in another state to show that jurisdiction to render it was lacking."

In the case of Acme Lumber Co. v. Hollowell, 2 O.L. Abs. 555, it was held that an action upon a judgment of a court of general jurisdiction of another state, the defense being a general denial, the plaintiff is not required to prove affirmatively the loss of such foreign state showing the existence, jurisdiction and authority to render judgment, in

addition to introduction of the record duly authenticated.

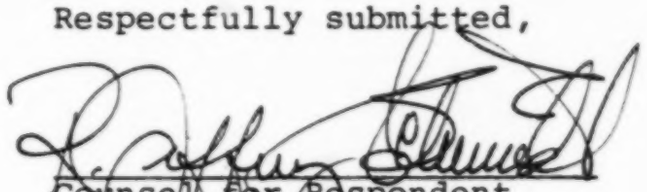
It is clear, therefore, that under the rulings laid down by the Supreme Court of the United States and the Supreme Court of Ohio, that in a suit upon a judgment rendered by a court of general jurisdiction of a sister state, jurisdiction over the subject matter and the parties is presumed that the burden of proof is upon the person attacking said judgment to show affirmatively that the court of said sister state did not have such jurisdiction. The record is clear in this case that the Petitioner offered no evidence or other testimony to rebut the presumption of jurisdiction and, as such, the presumption stands and the judgment is entitled to Full Faith and Credit in the State of Ohio.

Petitioner makes numerous allegations in its petition with regard to the lack of jurisdiction of the Indiana court to render the original judgment by indicating that the Petitioner was neither served with process nor offered any opportunity to appear and defend prior to judgment. Once again, the record is clear that Petitioner's assertions are mere allegations as there are no facts presented by the Petitioner which go to prove his allegations. Absent any proof to the contrary, the judgment of the Court of Indiana is presumed to be valid and unless affirmatively attacked in a suit upon said judgment in another state, is entitled to Full Faith and Credit by said state.

CONCLUSION

For the reasons stated above, Respondent says that a Petition for a Writ of Certiorari should be denied.

Respectfully submitted,



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CONSTITUTION OF THE UNITED STATES

ARTICLE 4, Section 1 - FULL FAITH AND CREDIT

Full Faith and Credit shall be given in each state to the public acts, records and judicial proceedings of every other state. The Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief for Respondent in Opposition was served on E. Bruce Hadden, Attorney for Petitioner, 500 West Wilson Bridge Road, Worthington, Ohio 43085, this 28th day of January, 1978, via regular United States mail, postage prepaid.

R. JEFFREY SCHMIDT

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-931

R. J. Kunkle, d/b/a R. J. Restoration Co., Petitioner

v.

Arthur Eggleston, Respondent

Petition for a Writ of Certiorari to the Tenth District Court of Appeals of Ohio

---

Reply Brief for Petitioner

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October Term, 1977

No. 77-931

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Petition for a Writ of Certiorari to the Tenth Distict Court of Appeals of Ohio

---

Reply Brief for Petitioner

ADDITIONAL QUESTION PRESENTED

The Respondent in its Brief in Opposition to the Petition for Writ of Certiorari raises an additional question with regard to the Full Faith and Credit provision of the Constitution of the United States, Article IV, Section 1. Is subject matter jurisdiction presumed and is the burden of proof on the

Petitioner when the Petitioner contests the validity of a purported judgment rendered by a sister state?

ARGUMENT

Petitioner recognizes and agrees with the Respondent that if a judgment is rendered by a Court of general jurisdiction in a sister state and that judgment on its face appears to be valid, then the burden of proof in attacking the validity of that judgment would rest with the Petitioner. Barber v. Barber, 323 U.S. 77, 89 L.Ed. 82, 65 S.Ct. 137 (1944); Williams v. North Carolina, 325 U.S. 226, 89 L.Ed. 1577, 65 S.Ct. 1095 (1945), rehearing denied 325 U.S. 895, 89 L.Ed. 2006, 65 S.Ct. 1650 (1945).

For the burden of persuasion to shift to the Petitioner when the validity of a judgment of a sister state is in issue, the following must be apparent

from the pleadings and the judgment:

> "***the duly attested record of the judgment of a state is entitled to such faith and credit in every court within the United States as it has by law or usage in the state from which it is taken. If it appears on its face to be a record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself. ***" Adam v. Saenger, 303 U.S. 59 (1937), at 62. (Emphasis added)

See also Cook v. Cook, 342 U.S. 126 (1951); Williams v. North Carolina, supra.

In the case at bar Respondent did not meet the above prerequisites for the burden of proof to shift to the Petitioner.

1. The Respondent failed to have the purported Indiana judgment duly attested in compliance with Ohio Civil Rule 44

(Appendix, pages 8-9).

2. The Indiana judgment does not disclose on its face to be rendered by a Court of general jurisdiction. The Indiana Court was, in fact, acting pursuant to a special legislative enactment (§40-1513 of the Indiana Act, Appendix, page 10); therefore, this judgment was rendered by a Court of limited jurisdiction.
3. The Indiana judgment shows that the Petitioner was not served with process prior to the rendering of the judgment and was not given an opportunity to be heard.

From the institution of these proceedings, Petitioner denied the validity of the Indiana judgment as it was invalid on its face. When the invalidity of a

judgment is obvious on its face and the record clearly establishes the irregularities of the alleged judgment, Respondent has not made a prima facie case to support a finding that the judgment is valid. Adam v. Saenger, supra, and Cook v. Cook, supra.

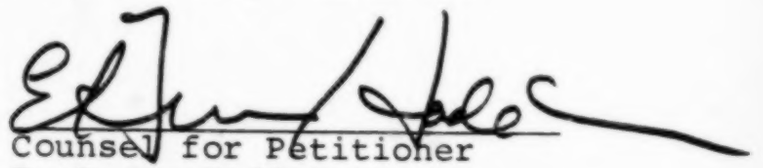
Respondent and the Courts below have assumed throughout these proceedings that the judgment was valid on its face thus shifting the burden of proving the invalidity of the judgment to the Petitioner. Examination of the Indiana judgment shows that it is not valid on its face. The obvious invalidity of the alleged judgment requires that it not be entitled to the full faith and credit by a sister state.

CONCLUSION

For the reason stated herein and the reasons submitted in the original

Petition, a Writ of Certiorari should issue to review the judgment of the Tenth District Court of Appeals of Ohio.

Respectfully submitted,



Counsel for Petitioner
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ADDENDA

In his initial Petition, the Petitioner erroneously indicated that a Petition should issue to the Ohio Supreme Court. Subsequent to the initial filing of his Petition, the Petitioner has been in contact with the Clerk of the United States Supreme court who indicated that she would hand correct the Petition so that it would issue to the Tenth District Court of Appeals of Ohio. On the basis of that representation, Petitioner has indicated on his Reply Brief that the Petition would issue to the Tenth District Court of Appeals of Ohio.

OHIO RULES OF CIVIL PROCEDURE

RULE 44. Proof of official record

(A) Authentication.

(1) Domestic. An official record, or an entry therein, kept within a state or within the United States or within a territory or other jurisdiction of the United States, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record in which the record is kept or may be made by any public officer having a seal of office and having official duties in the political subdivision in which the record is kept, authenticated by the seal of his office.

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (a) of the attesting person or (b) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may

be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (a) admit an attested copy without final certification or (b) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

(B) Lack of record. A written statement that after diligent search no record or entry of a specified tenor is bound to exist in the records designated by the statement, authenticated as provided in subdivision (A)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (A)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(C) Other proof. This rule does not prevent proof of official records or of entry or lack of entry therein by any other method authorized by law.

INDIANA WORKMEN'S COMPENSATION ACT

[40-1513]. Judgment of circuit or superior court on agreement or award--Modification.--Upon order of the industrial board made after five [5] days' notice is given to the opposite party, any party in interest may file in the circuit or superior court of the county in which the injury occurred, a certified copy of the memorandum of agreement approved by the board, or of an order or decision of the board, or of an award of the full board unappealed from, or of an award of the full board affirmed upon an appeal, whereupon said court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though said judgment had been rendered in a suit duly heard and determined by said court.

Any such judgment of said circuit or superior court unappealed from or affirmed on appeal or modified in obedience to the mandate of the Appellate Court [Court of Appeals], shall be modified to conform to any decision of the industrial board, ending, diminishing or increasing any weekly payment under the provisions of section 45 [22-3-3-27] of this act, upon the presentation of it of a certified copy of such decision.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief of Petitioner was served on R. Jeffrey Schmidt, Esq., One Nationwide Plaza, 25th Floor, Columbus, Ohio 43215, and on Thomas Tripp, Esq., 165 North High Street, Columbus, Ohio 43215, Attorneys for Respondent, by U. S. Mail, postage prepaid, this 9TH day of FEB, 1978.

E. Bruce Hadden